

3 FAM 3130 **PREMIUM COMPENSATION**

(*CT:PER-664; 01-27-2012*)
(*Office of Origin: HR/RMA*)

3 FAM 3131 AUTHORITIES AND PROCEDURES

(*CT:PER-664; 01-27-2012*)
(*Uniform State/USAID/Commerce/Agriculture*)
(*Applies to Civil Service and Foreign Service Employees*)

Authorities *include*:

- 5 U.S.C. 5541 - 5550
- 5 U.S.C. 5926
- 5 CFR 550
- 5 CFR 551 (Fair Labor Standards Act, FLSA)
- Section 412 of the Foreign Service Act of 1980

3 FAM 3132 GENERAL RULES

(*CT:PER-664; 01-27-2012*)
(*Uniform State/USAID/Commerce/Agriculture*)
(*Applies to Civil Service and Foreign Service Employees*)

- a. Premium compensation for overtime work is provided under three statutes:
 - (1) 5 U.S.C.;
 - (2) The Fair Labor Standards Act (FLSA); and
 - (3) Section 412 of the Foreign Service Act of 1980 (codified at 22 U.S.C. 3972).
- b. Premium compensation for night, Sunday, and holiday work is provided under 5 U.S.C. **5542** (Subchapter V - Premium Pay).

- c. *Experts and consultants are not entitled to overtime pay under 5 U.S.C. 5542 but may qualify for premium pay. See: 5 CFR 304.106(b), (c).*

3 FAM 3133 OVERTIME

3 FAM 3133.1 General Overtime Provisions

(CT:PER-664; 01-27-2012)

(Uniform State/USAID/Commerce/Agriculture)

(Applies to Civil Service and Foreign Service Employees)

Regulations governing overtime in general are published in:

- 5 CFR 550.101 - 550.187
- 5 CFR 551.501 - 551.541

3 FAM 3133.2 Regular Compensatory Time Off

(TL:PER-391; 12-15-2000)

(Uniform State/USAID/Commerce/Agriculture)

(Applies to Civil Service and Foreign Service Employees)

Regulations governing regular compensatory time off are published in:

- 5 CFR 550.114
- 5 CFR 551.531

3 FAM 3133.3 Requirement for Regular Compensatory Time Off for Irregular Overtime Work

(CT:PER-664; 01-27-2012)

(Uniform State/USAID/Commerce/Agriculture)

(Applies to Civil Service and Foreign Service Employees)

For irregular overtime work scheduled after the beginning of the administrative workweek, eligible Foreign Service and Civil Service employees whose basic annual pay exceeds the maximum rate for GS-10 (i.e., above the salary of GS-10, step 10) *must* be granted regular compensatory time off instead of overtime pay. An exception to this policy may be authorized by M/FMP/DFO (5 CFR 550.101(b)(17/18)) at the request

of an executive director for specific units whose personnel are frequently required to perform irregular overtime work.

3 FAM 3133.4 Special Compensatory Time Off at Isolated Posts and Certain Other Designated Posts in Foreign Areas

3 FAM 3133.4-1 Definitions

(*TL:PER-391; 12-15-2000*)

(*Uniform State/USAID/Commerce/Agriculture*)

(*Applies to Civil Service and Foreign Service Employees*)

"Special compensatory time off at isolated posts and certain other designated posts in foreign areas" means time off from work during the employee's basic workweek for an equal amount of regularly scheduled overtime work at specified foreign posts.

3 FAM 3133.4-2 Authority

(*TL:PER-391; 12-15-2000*)

(*Uniform State/USAID/Commerce/Agriculture*)

(*Applies to Civil Service and Foreign Service Employees*)

Authority for special compensatory time off at isolated posts and certain other designated posts in foreign areas is published in:

- 5 U.S.C. 5926
- 5 U.S.C. 5921
- Chapter 800 of the Standardized Regulations

3 FAM 3133.4-3 Eligibility

(*CT:PER-664; 01-27-2012*)

(*Uniform State/USAID/Commerce/Agriculture*)

(*Applies to Civil Service and Foreign Service Employees*)

U.S. citizen employees of the foreign affairs agencies officially assigned to positions in foreign areas on a full-time, part-time, or temporary-duty status, and receiving basic compensation, are eligible for special compensatory time off at isolated posts and certain other designated posts in foreign areas. The eligible U.S. citizen employees include ambassadors,

Senior Foreign Service members, Foreign Service officers (FSOs), and others who are exempt from *5 U.S.C. 55* (Subchapter V, Premium Pay, including regular compensatory time off, as well as those covered by Premium Pay).

3 FAM 3133.4-4 Isolated Post Benefit

(CT:PER-664; 01-27-2012)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)

- a. An "isolated post" means a post:
 - (1) That is in a foreign area as defined in 5 U.S.C. 5921(6);
 - (2) That must operate as a self-contained community in a remote and desolate area where access to alternative sources of social contact is limited by physical barriers of distance and/or restrictions of the post; and
 - (3) Where some or all functions are required to be maintained on a substantially continuous basis at least 16 hours per day, *7* days a week.
- b. The designation of an isolated post must be approved by the Deputy Assistant Secretary for Human Resources (DGHR) of the Department of State.
- c. The principal officer at post or designee may grant special compensatory time off to an employee serving at an isolated post who performs functions required to be maintained at least 16 hours a day, *7* days a week.
- d. Time off earned under this section *must* be for use only while the employee is assigned to the post where it is earned.
- e. Employees eligible for overtime pay under 5 U.S.C. who perform regularly scheduled overtime work under this section may elect in writing to receive compensation at overtime rates under 5 CFR 550 and *5 CFR* 551 instead of special compensatory time off under this section. This election must be made during the pay period in which the overtime is scheduled and may not later be changed.

3 FAM 3133.4-5 Benefit at Other Designated Posts

(CT:PER-664; 01-27-2012)
(Uniform State/USAID/Commerce/Agriculture)

(Applies to Civil Service and Foreign Service Employees)

- a. This section applies to posts in a locality where irregular hours of work are customarily observed, or where other special conditions make it desirable to schedule the workweek on other than the usual five 8-hour days. Such scheduling will permit closer conformity to local practices.
- b. The principal officer at post or designee approves the scheduling of workweeks under this provision.
- c. Credit for special compensatory time off under this *section*:
 - (1) *Must* not be converted to overtime pay;
 - (2) *Must* be for use only when the employee is assigned to the post where it is earned;
 - (3) Must be used during the pay period in which it is earned; and
 - (4) *Must* be forfeited if not used by the time the employee is reassigned to another post.
- d. If an employee has unused special compensatory time off credited at the time of departure from post on home leave orders, such compensatory time off may be approved for use during home leave, if authorized by the personnel office of the agency headquarters.
- e. If special compensatory time off earned under this *section* is not taken when scheduled, work performed during the scheduled time-off period may be reported as overtime work for which regular compensatory time off or overtime pay is due if the employee qualifies under 5 CFR 550 or 5 CFR 551; or for Foreign Service officers, such work may be reported as overtime work for which special compensatory time off for FSOs is due.

3 FAM 3133.4-6 Exceptions

(TL:PER-391; 12-15-2000)

(Uniform State/USAID/Commerce/Agriculture)

(Applies to Civil Service and Foreign Service Employees)

The limitation on premium compensation, including compensatory time off, contained in 5 U.S.C. 5547 does not apply to special compensatory time off provided under 3 FAM 3133.4-5, paragraph d or e.

3 FAM 3133.5 Special Compensatory Time Off for

Foreign Service Officers

(CT:PER-664; 01-27-2012)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Foreign Service Employees)

- a. Special compensatory time off for Foreign Service officers is authorized by 22 U.S.C. 3972 (section 412(c) of the Foreign Service Act of 1980, as amended).
- b. Special compensatory time off for Foreign Service officers:
 - (1) Is time off from work during the basic workweek in exchange for performing an equal amount of overtime work or holiday work that is officially ordered or approved in writing by an authorizing official; and
 - (2) Will be forfeited without any other kind of compensation if not used during the 26 weeks following the pay period in which it was earned.
- c. FSOs who are authorized the special differential for regular overtime work in substantial excess of normal hours under 3 FAM 3139 or who are entitled to compensation for overtime work under the *Fair Labor Standards Act (FLSA)* are not eligible for special compensatory time off under this section.
- d. Special compensatory time off for FSOs may not be granted in exchange for overtime work that has been credited with another type of special compensatory time off.
- e. Special compensatory time off for FSOs may not be granted for any overtime or holiday work which, if it were compensable under 5 *U.S.C.* 55 (Subchapter V - Premium Pay), would cause an officer's aggregate biweekly rate of pay to exceed the maximum biweekly payable rate of basic pay for GS-15.

3 FAM 3133.6 Special Compensatory Time Off for Religious Observances

3 FAM 3133.6-1 Authority

(TL:PER-391; 12-15-2000)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)

Authority for special compensatory time off for religious observances is published in:

- 5 U.S.C. 5550(a)
- 5 CFR 550.1001 - 1002

3 FAM 3133.6-2 Eligibility

*(TL:PER-391; 12-15-2000)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)*

All employees of the foreign affairs agencies except Foreign Service national employees, U.S. citizen employees compensated under section 408(a) of the Foreign Service Act of 1980, and consular agents are eligible for special compensatory time off for religious observances.

3 FAM 3134 PAY FOR HOLIDAY WORK

*(CT:PER-664; 01-27-2012)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)*

a. The legal and regulatory provisions governing pay for holiday work are published in:

- 5 U.S.C. 5546
- 5 CFR 550.131 – 550.132
- 5 CFR 610, Subpart B
- 50 CG 519
- Comp. Gen. B-194035, June 18, 1979

b. Holiday premium pay does not apply to work performed on local holidays.

3 FAM 3135 NIGHT PAY DIFFERENTIAL

*(TL:PER-391; 12-15-2000)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)*

Night pay differential is governed by regulations published in 5 CFR 550.121 - 550.122.

3 FAM 3136 SUNDAY PREMIUM PAY

(*CT:PER-664; 01-27-2012*)
(*Uniform State/USAID/Commerce/Agriculture*)
(*Applies to Civil Service and Foreign Service Employees*)

Sunday premium pay is governed by regulations published in 5 CFR 550.171.

3 FAM 3137 ON-CALL STATUS

3 FAM 3137.1 General

(*CT:PER-664; 01-27-2012*)
(*Uniform State/USAID/Commerce/Agriculture*)
(*Applies to Civil Service and Foreign Service Employees*)

On-call status is a requirement to be available to return to duty on short notice during off-duty hours. Employees must be available by telephone, electronic beeper, or similar device and, if so ordered, return within *1* hour to the office or duty station to perform urgent work.

3 FAM 3137.2 Compensation

(*CT:PER-664; 01-27-2012*)
(*Uniform State/USAID/Commerce/Agriculture*)
(*Applies to Civil Service and Foreign Service Employees*)

There is no entitlement to premium or other extra compensation for on-call status when no work is performed. An authorizing officer (the principal officer at post, executive director of a bureau, or designee) *must* request volunteers for on-call availability. Management will not impose any restraint or coercion on employees who decline to volunteer. In the absence of sufficient volunteers, the authorizing officer may assign on-call status on a rotating basis among employees with the requisite skills.

3 FAM 3138 PREMIUM PAY ON AN ANNUAL BASIS

3 FAM 3138.1 Authority

(CT:PER-664; 01-27-2012)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)

Authority on premium pay on an annual basis is published in:

- 5 CFR 550.141 – 144 (*Regularly Scheduled Standby Duty*)
- 5 CFR 550.151 – 154 (*Administratively Uncontrollable Work*)
- 5 CFR 550.161 – 164 5 U.S.C. 5545 (*General*)
- 5 U.S.C. 55452 and 5 CFR 550.181 – 187 (*Law Enforcement Authority Pay*)

3 FAM 3138.2 Regularly Scheduled Standby Duty

3 FAM 3138.2-1 Eligibility

(TL:PER-391; 12-15-2000)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)

- a. Full-time U.S. citizen members of the Service in State, USAID, and Commerce assigned abroad are eligible.
- b. FSO's, FSO career candidates, and medical officers eligible under 3 FAM 3290 are not eligible.

3 FAM 3138.2-2 Definition

(TL:PER-391; 12-15-2000)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)

Regularly scheduled standby duty is a requirement for standby status on a fixed schedule in addition to the basic 40-hour workweek over a 3-month cycle.

3 FAM 3138.2-3 General

(*CT:PER-664; 01-27-2012*)
(*Uniform State/USAID/Commerce/Agriculture*)
(*Applies to Civil Service and Foreign Service Employees*)

- a. Standby-duty pay is provided in accordance with regulations at 5 CFR 550.141 - 144.
- b. To receive standby-duty pay, employees must:
 - (1) Be eligible for premium pay in accordance with 3 FAM 3133.3 and 3 FAM 3138.2-1, paragraph a;
 - (2) Occupy positions that have been designated by the executive director of the appropriate regional bureau as meeting the criteria in 5 CFR 550.141; and
 - (3) Be certified for receipt of standby-duty pay by the principal officer at post or designee.
- c. Eligible members assigned on a TDY basis to positions designated for standby-duty pay are eligible to receive standby-duty pay.
- d. Eligible members with the same specialization at a post will not be scheduled for standby duty simultaneously to perform the same function except in extraordinary circumstances.

3 FAM 3138.2-4 Effective Dates

(*TL:PER-391; 12-15-2000*)
(*Uniform State/USAID/Commerce/Agriculture*)
(*Applies to Civil Service and Foreign Service Employees*)

- a. Entitlement begins on the date that an eligible member begins duty for basic pay purposes in a designated position.
- b. Entitlement ends on the date that an eligible member ceases duty for basic pay purposes in a designated position.

3 FAM 3138.3 Administratively Uncontrollable Overtime

(*TL:PER-391; 12-15-2000*)
(*Uniform State/USAID/Commerce/Agriculture*)
(*Applies to Civil Service and Foreign Service Employees*)

- a. Premium pay for administratively uncontrollable overtime (AUO) is provided in accordance with regulations at 5 CFR 550.151 - 154.
- b. AUO may be authorized for substantial amounts of irregular overtime work to eligible employees in positions in which the hours of duty cannot be controlled administratively.
- c. The employee must be generally responsible for recognizing, without supervision, circumstances that require the employee to remain on duty.
- d. Pay is authorized for a particular office or post under procedures approved by the Director General of the Foreign Service.

3 FAM 3138.4 Law Enforcement Availability Pay

*(TL:PER-391; 12-15-2000)
(Uniform State/USAID/Commerce/Agriculture)
(Applies to Civil Service and Foreign Service Employees)*

Law enforcement availability pay (LEAP) is provided in accordance with 5 U.S.C. 5545a and the regulations in 5 CFR 550.181 - 550.187. LEAP for special agents in the Diplomatic Security Service is provided in accordance with 3 FAM 3155.

3 FAM 3139 SPECIAL DIFFERENTIAL FOR SUBSTANTIAL AMOUNTS OF EXTRA WORK

3 FAM 3139.1 Authority

*(CT:PER-664; 01-27-2012)
(State and USAID)
(Applies to Foreign Service Employees)*

- a. Authority for special differential for substantial amounts of extra work is published in:
 - (1) 22 U.S.C. 3972 (section 412 of the Foreign Service Act of 1980, as amended); *and*
 - (2) 67 CG 351.
- b. *HR/RMA is the coordinating office for Special Differential. For USAID, OHR/PPIM is the coordinating office.*

- c. Under this authority, there are two types of special differential with different requirements: One type is for certified, covered positions (see 3 FAM 3139.2) and another type is for emergency, mission-critical work (see 3 FAM 3139.3).

3 FAM 3139.2 Special Differential for Certified, Covered Positions

3 FAM 3139.2-1 Who is Covered

(CT:PER-664; 01-27-2012)

(State Only)

(Applies to Foreign Service Employees)

Commissioned Foreign Service officers (FSOs) in classes FO-02 through FO-06 who:

- (1) Are serving in covered positions; and
- (2) Are required by their supervisors to perform additional work on a regular continuing basis in substantial excess of normal requirements.

3 FAM 3139.2-2 Limitations

(CT:PER-664; 01-27-2012)

(State and USAID)

(Applies to Foreign Service Employees)

- a. The number of positions that will be certified for special differential at any one time is limited to:
 - (1) Approximately 175 worldwide; and
 - (2) Twelve at the Multinational Force Organization for the State contingent.
- b. FSOs in class FO-01 and members of the Senior Foreign Service are ineligible under this section.
- c. FSOs of any class working in the immediate office of principal officers in the Department or U.S. Agency for International Development (USAID) paid at Executive Levels I, II, or III are ineligible. Chiefs of mission are not principal officers within the meaning of this section.

- d. FSOs of any class eligible to receive overtime compensation under the Fair Labor Standards Act (FLSA) are ineligible.
- e. An FSO who receives this form of special differential is not eligible to earn or receive Special Compensatory Time Off for Foreign Service Officers under 3 FAM 3133.5.

3 FAM 3139.2-3 Criteria for Determining Covered Positions and Special Differential Rates

(CT:PER-664; 01-27-2012)

(State Only)

(Applies to Foreign Service Employees)

Special differential is paid as a percentage of basic compensation earned during a pay period. The categories, percentages, and minimum requirements for covered positions are:

- (1) **18% - Category A:** Positions that require an average of at least 55 hours of work per week for a period of 6 consecutive months, and the employee is required to work evenings, Sundays, and/or holidays;
- (2) **13% - Category B:** Positions that require an average of at least 45 hours of work per week for a period of 6 consecutive months, and the employee is required to work evenings, Sundays, and/or holidays; and
- (3) **10% - Category C:** Positions that require work for a period of 6 consecutive months on a shift basis with over 50 percent of the hours scheduled either on workdays between 6:00 p.m. and 6:00 a.m., on Sundays, or on holidays.

3 FAM 3139.2-4 Certification and Effective Dates

(CT:PER-664; 01-27-2012)

(State Only)

(Applies to Foreign Service Employees)

- a. New positions will be certified for coverage effective the first day of the first full pay period on or after April 1 or October 1. Positions already certified will be reviewed at 6-month intervals for recertification effective the first day of the first full pay period on or after April 1 and October 1.
- b. Payments are effective on the first day of the first full pay period after an

eligible member is assigned to a certified position. Payments terminate on the first day of the first full pay period after:

- (1) *A member departs for reassignment to another position;*
 - (2) *A member departs for training in preparation for a new assignment;*
 - (3) *A member is promoted to FO-01; or*
 - (4) *A position is decertified.*
- c. *Payments will be suspended or forfeited when a member is absent:*
- (1) *In a nonduty status for more than 21 consecutive calendar days; or*
 - (2) *On temporary duty to another position that is not covered for more than 21 consecutive calendar days.*

3 FAM 3139.3 Special Differential for Emergency or Mission-Critical Work

3 FAM 3139.3-1 Who is Covered

*(CT:PER-664; 01-27-2012)
(State and USAID)
(Applies to Foreign Service Employees)*

Commissioned Foreign Service officers (FSOs) in classes FO-01 through FO-06 who are on official duty at a post where:

- (1) *The Under Secretary for Management has determined the work to be performed is work performed in connection with an emergency or the aftermath of an emergency involving a direct threat to life and property, or where the Under Secretary for Management has deemed the work to be mission-critical; and*
- (2) *The work is performed on a regular continuing basis and is in substantial excess of normal requirements; and*
- (3) *The employee is expected to be on official duty at the post for a minimum of 6 months; and*
- (4) *The employee meets the criteria described in 3 FAM 3139.3.*

3 FAM 3139.3-2 Limitations

(CT:PER-664; 01-27-2012)
(State and USAID)
(Applies to Foreign Service Employees)

- a. Senior Foreign Service employees are ineligible under this section.
- b. Members of the Foreign Service of any class eligible to receive overtime compensation under 5 U.S.C. or the Fair Labor Standards Act are ineligible.
- c. An FSO who receives this form of special differential is not eligible to earn or receive special compensatory time off for FSOs under either 3 FAM 3133.4 or 3 FAM 3133.5.

3 FAM 3139.3-3 Criteria for Determining Eligible Special Differential Rates

(CT:PER-664; 01-27-2012)
(State and USAID)
(Applies to Foreign Service Employees)

- a. Special differentials under this subsection (3 FAM 3139.3) are paid as a percentage of basic compensation earned during a pay period. The Under Secretary for Management may designate a percentage of an employee's basic compensation, up to a maximum of 35 percent, to be paid as a special differential as is appropriate to meet the needs of the Department.
- b. For USAID, the Administrator is the approving official.

3 FAM 3139.3-4 Certification and Effective Dates

(CT:PER-664; 01-27-2012)
(State and USAID)
(Applies to Foreign Service Employees)

- a. Qualifying employees or groups of employees earning a special differential under this section (3 FAM 3139.3) will begin earning the differential in the first full pay period during which the employee or group of employees meets the relevant criteria (e.g., has transferred or been sent TDY to a duty station).
- b. Special differential payments under this section (3 FAM 3139.3) must terminate upon:
 - (1) The last day of the pay period in which an eligible employee departs

the post requiring the emergency or mission-critical work;

- (2) *An eligible employee's promotion to the Senior Foreign Service; or*
- (3) *The effective date of a determination by the Under Secretary for Management that the special differential is no longer authorized.*

c. *Payments will be suspended or forfeited when a member is absent:*

- (1) *In a nonduty status for more than 21 consecutive calendar days; or*
- (2) *On temporary duty for more than 21 consecutive calendar days performing work that does not qualify as emergency or mission-critical work under this section (3 FAM 3139.3).*

3 FAM 3139.4 Relationship to Other Payments

(CT:PER-664; 01-27-2012)

(State and USAID)

(Applies to Foreign Service Employees)

Special differentials under 3 FAM 3139 are:

- (1) *Taxable income for Federal, State, and other U.S. locality purposes;*
- (2) *Included in the lump-sum annual leave payment (67 CG 351);*
- (3) *Not used for retirement or Thrift Savings Plan (TSP) purposes; and*
- (4) *Not subject to the limitations in section 552 of the Standardized Regulations or 5 U.S.C. 5547.*